

The opinion in support of the decision being entered today was *not* written for publication and is *not* binding precedent of the Board.

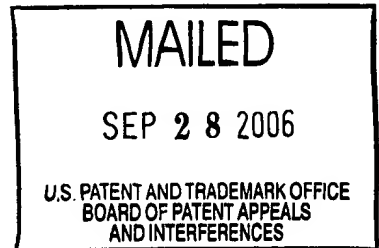
UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Ex parte John P. Hearn, Kim N. Matthews, and Christopher C. Yu

Appeal No. 2006-0997
Application No. 09/608,473

ON BRIEF



Before HAIRSTON, BARRY, and BLANKENSHIP, *Administrative Patent Judges*.
BARRY, *Administrative Patent Judge*.

The patent examiner rejected claims 1-20, 21, 26, 27, 31, 34-36, and 40-43.
The appellants appeal therefrom under 35 U.S.C. § 134(a). We reverse.

I. BACKGROUND

The invention at issue on appeal concerns the transmission of real-time-constrained data via networks that use the Internet Protocol ("IP"). (Spec. at 1.) Because video encoded according to Motion Pictures Expert Group-2 ("MPEG-2") standards cannot withstand dropped packets, MPEG-2 video streams need to be given priority over streams that are less sensitive to dropped packets. (*Id.*)

Consequently, the appellants' invention determines whether an IP packet contains MPEG-2 video. More specifically, the invention searches the packet's payload for "sync" bytes of the MPEG-2 stream. When such sync bytes are found, the packet is determined to contain MPEG-2 video. (*Id.* at 2.)

A further understanding of the invention can be achieved by reading the following claim.

1. A method for processing an internet protocol (IP) packet, comprising the step of identifying that said packet contains motion picture expert group (MPEG) video as a function of only the contents of said IP data payload of said IP packet exclusive of any information in any real time protocol (RTP) header which may be therein.

Claims 1-19 stand rejected under 35 U.S.C. § 112, ¶2, as indefinite. Claims 1-6, 20, 21, 26, 27, 31, 34-36, and 40-43 stand rejected under 35 U.S.C. § 102(e) as anticipated by U.S. Patent No. 6,557,031 ("Mimura").

II. OPINION

Our opinion addresses the rejections in the following order:

- indefiniteness rejection
- anticipation rejection.

A. INDEFINITENESS REJECTION

"Rather than reiterate the positions of the examiner or the appellants *in toto*, we focus on the point of contention therebetween." *Ex parte Muresan*, No. 2004-1621, 2005 WL 951659, at *1 (Bd.Pat.App & Int. Feb 10, 2005). The examiner makes the following assertion.

If the real time protocol (RTP) header contains data A (the data A depend on the content of the IP data payload) or data B (the content of the IP data payload depend on the data B), then the phrase "may be" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention and the real time protocol (RTP) header contains the conventional element, which is not irrelevant.

(Examiner's Answer at 7.) The appellants argue, "This phrase characterizes an RTP header, which is the conventional element that may, or may not, be within the IP data payload of any particular IP packet. It is essentially the equivalent of stating 'the contents of said IP data payload of said IP packet exclusive of any information in any real time protocol (RTP) header existing therein'." (Appeal Br. at 4.)

"The test for definiteness is whether one skilled in the art would understand the bounds of the claim when read in light of the specification. If the claim read in light of the specification reasonably apprise[s] those skilled in the art of the scope of the invention, Section 112 demands no more." *Miles Labs., Inc. v. Shandon Inc.*, 997 F.2d 870, 875, 27 USPQ2d 1123, 1126 (Fed. Cir. 1993) (internal citations omitted). Here,

claim 1 recites in pertinent part the following limitations: "identifying that said packet contains motion picture expert group (MPEG) video as a function of only the contents of **said IP data payload of said IP packet exclusive of any information in any real time protocol (RTP) header which may be therein.**" (Emphasis added.) We are persuaded that one skilled in the art would understand that the emphasized phrase refers to the contents of the IP data payload exclusive of any data in any RTP header existing therein. Therefore, we reverse the indefiniteness rejection of claims 1-19.

B. ANTICIPATION REJECTION

The examiner makes the following assertions.

Mimura et al teach a method for processing an internet protocol (IP) packet, comprising the steps of: searching through a payload of said IP packet exclusive of any information in any real time protocol (RTP) header therein for a pattern indicative of the presence of motion picture expert group (MPEG-2 video); indicating that said IP packet contains MPEG-2 video only if said pattern is found; and determining whether a payload of said IP packet has a length equal to an integral multiple of a length of an MPEG-2 transport stream packet either before or after subtracting from said payload Length the Length of an RTP head (figures 3-5; column 9 Line 5 to column 12 line 15; and column 12 lines 17-46).

(Examiner's Answer at 8.) The appellants argue, "The sections of Mimura et al. cited . . . do not teach searching through a payload of an IP packet for a pattern. . . ." (Appeal Br. at 6.)

In addressing the point of contention, the Board conducts a two-step analysis. First, we construe the independent claims at issue to determine their scope. Second, we determine whether the construed claims are anticipated.

1. Claim Construction

"Analysis begins with a key legal question — *what is the invention claimed?*" *Panduit Corp. v. Dennison Mfg. Co.*, 810 F.2d 1561, 1567, 1 USPQ2d 1593, 1597 (Fed. Cir. 1987). Here, independent claim 1 recites in pertinent part the following limitations: "identifying that said packet contains motion picture expert group (MPEG) video as a function of only the contents of said IP data payload of said IP packet exclusive of any information in any real time protocol (RTP) header which may be therein." Independent claims 20, 31, 35, 40, 42, and 43 include similar limitations. In summary, the independent claims require examining an IP packet's payload, exclusive of any data in any RTP header therein, to determine whether the IP packet contains MPEG-encoded video.

2. Anticipation Determination

"Having construed the claim limitations at issue, we now compare the claims to the prior art to determine if the prior art anticipates those claims." *In re Cruciferous Sprout Litig.*, 301 F.3d 1343, 1349, 64 USPQ2d 1202, 1206 (Fed. Cir. 2002). "A claim

is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros., Inc. v. Union Oil Co.*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987) (citing *Structural Rubber Prods. Co. v. Park Rubber Co.*, 749 F.2d 707, 715, 223 USPQ 1264, 1270 (Fed. Cir. 1984); *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 1548, 220 USPQ 193, 198 (Fed. Cir. 1983); *Kalman v. Kimberly-Clark Corp.*, 713 F.2d 760, 771, 218 USPQ 781, 789 (Fed. Cir. 1983)). "[A]bsence from the reference of any claimed element negates anticipation." *Kloster Speedsteel AB v. Crucible, Inc.*, 793 F.2d 1565, 1571, 230 USPQ 81, 84 (Fed. Cir. 1986).


Here, the sections of Mimura cited by the examiner disclose "the construction of an MPEG-TS signal to be transmitted from the video server 55 (see FIG. 8) to the Internet 50, the STB 57 connected to the CATV network 56 and an STB on another CATV network connected through the interworking unit 54." (Col. 9, ll. 45-49.) "[I]n th[is] case . . . [an] adaptation field 2 is inserted always immediately after the TS header and [an] IP header is transmitted using this adaptation field 2, as shown in FIG. 1.: (*Id.* at ll. 54-58.) The sections also disclose how "an MPEG-TS packet is formed with such a construction as shown in FIG. 1, 2 or 3 and the packet is processed by an interworking unit and then transmitted to an IP network." (Col. 11, ll. 17-21.) We are unpersuaded, however, that these disclosures, or the others cited by the examiner,


describe examining an IP packet's payload, exclusive of any data in any RTP header therein, to determine whether the IP packet contains MPEG-encoded video. Therefore, we reverse the anticipation rejection of claims 1, 20, 31, 35, 40, 42, and 43 and of claims 2-6, 21, 26, 27, 34, 36, and 41, which depend therefrom.

III. CONCLUSION

In summary, the rejection of claims 1-19 under 35 U.S.C. § 112, ¶2, is reversed. The rejection of claims 1-6, 20-21, 26-27, 31, 34-36, and 40-43 under § 102(e) is also reversed.


KENNETH W. HAIRSTON
Administrative Patent Judge


LANCE LEONARD BARRY
Administrative Patent Judge


HOWARD B. BLANKENSHIP
Administrative Patent Judge

BOARD OF PATENT
APPEALS
AND
INTERFERENCES

Appeal No. 2006-0997
Application No. 09/608,473

Page 9

LUCENT TECHNOLOGIES, INC.
DOCKET ADMINISTRATION
101 CRAWFORDS CORNER ROAD, ROOM SJ-219
HOLMDEL, NJ 07733